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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN ALVAREZ,

Defendant and Appellant.

B301306

(Los Angeles County  
Super. Ct. No. BA277752)

APPEAL from an order of the Superior Court of Los Angeles County, Ronald S. Coen, Judge. Appeal dismissed.

Tracy J. Dressner, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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On January 26, 2005, Juan Alvarez poured gasoline over the hood, roof, and sides of his Jeep Cherokee Sport, drove the Jeep onto railroad tracks in Glendale, exited the vehicle, and ran away from the tracks. A Metrolink train struck Alvarez's Jeep, the cab car of the train derailed, and the Jeep became embedded underneath the derailed cab car. Sparks and frictional heat ignited vapors from the gasoline Alvarez poured onto the Jeep, and the resulting fire burned the Jeep and part of the cab car as they continued to move along the tracks. The cab car and the passenger car behind it eventually crashed into a second Metrolink train, and all three passenger cars on the second train derailed. Eleven passengers from the two Metrolink trains were killed and 185 were injured. (*People v. Alvarez* (Jan. 24, 2012, B210418) [nonpub. opn.], pp. 2-3.)<sup>1</sup>

In 2008, a jury found Alvarez guilty of 11 counts of first degree murder and one count of arson and found true a multiple murder special circumstance. The trial court sentenced Alvarez to 11 consecutive terms of life in prison without the possibility of parole for the murders and imposed and stayed a two-year term for the arson. (*People v. Alvarez, supra*, B210418, p. 10.)

Alvarez appealed, challenging the sufficiency of the evidence supporting his murder convictions, among other things. In an opinion affirming the judgment, this court concluded substantial evidence established Alvarez committed felony murder (the underlying felony being arson). In reaching this conclusion, we explained, in pertinent part: (1) substantial evidence presented at trial demonstrated Alvarez specifically

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<sup>1</sup> The cited opinion is from Alvarez's direct appeal from his judgment of conviction.

intended to and did commit arson; (2) Alvarez “was the actual killer” in this case; and (3) “the killings and arson” were “parts of one continuous transaction.” (*People v. Alvarez, supra*, B210418, pp. 10-13.) In evaluating Alvarez’s claim of instructional error, we explained: “Proximate cause, natural and probable consequences, and foreseeability have no bearing on felony-murder liability.” (*Id.* at p. 16.)

On July 16, 2019, Alvarez filed a petition for resentencing under Penal Code<sup>2</sup> section 1170.95. Senate Bill No. 1437, which added section 1170.95, “was enacted ‘to amend the felony murder rule and the natural and probable consequences doctrine, as it relates to murder, to ensure that murder liability is not imposed on a person who is not the actual killer, did not act with the intent to kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life.’” (*People v. Lewis* (2020) 43 Cal.App.5th 1128, 1135.) Section 1170.95 permits a person convicted of felony murder or murder under a natural and probable consequences theory to petition the court to have the murder conviction vacated and to be resentenced, if the person could not be convicted of murder in light of the changes to law enacted by Senate Bill No. 1437, as discussed above.

On August 9, 2019, the trial court issued a minute order denying Alvarez’s petition for resentencing under section 1170.95. In the minute order, the trial court set forth a summary of the facts of the case, and this court’s conclusions on felony murder liability in the opinion in Alvarez’s direct appeal from his

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<sup>2</sup> Further statutory references are to the Penal Code.

convictions (discussed above), and concluded Alvarez is not eligible for relief under section 1170.95.

Alvarez filed a timely notice of appeal, and this court appointed counsel for him. After examination of the record, counsel filed an opening brief raising no issues and asking this court to review the record independently pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). On February 25, 2020, we sent a letter to Alvarez and his appointed counsel, advising Alvarez that within 30 days he could personally submit any contentions or issues he wanted us to consider, and directing counsel to send the record and opening brief to Alvarez immediately. We received no response from Alvarez.

Because Alvarez's appeal is not his first appeal of right from his conviction, he is not entitled to our independent review of the record pursuant to *Wende* or its federal constitutional counterpart, *Anders v. California* (1967) 386 U.S. 738. (See *People v. Kelly* (2006) 40 Cal.4th 106, 119; *People v. Serrano* (2012) 211 Cal.App.4th 496, 503 (*Serrano*); *Pennsylvania v. Finley* (1987) 481 U.S. 551, 559.)<sup>3</sup> He is entitled, however, to file a supplemental brief and, if he files such a brief, to our review of his contentions. (See *Serrano*, at p. 503; cf., *Ben C.*, *supra*, 40 Cal.4th at p. 544, fn. 6; *Ben C.*, at pp. 554–555 (dis. opn. of

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<sup>3</sup> Under *Serrano*, in a criminal appeal in which *Wende* does not apply, counsel who finds no arguable issues is still required to (1) inform the court that counsel has found no arguable issues to be pursued on appeal; (2) file a brief setting out the applicable facts and law; (3) provide a copy of the brief to appellant; and (4) inform the appellant of the right to file a supplemental brief. (*Serrano*, *supra*, 211 Cal.App.4th at p. 503, citing *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 544 (*Ben C.*).)

George, C. J.).) If no supplemental brief is filed, we may deem the appeal to be abandoned and dismiss the appeal. (*Serrano*, at pp. 503-504.)

Under either *Wende* or *Serrano*, we are satisfied that Alvarez's counsel has fully complied with counsel's responsibilities. (See *Wende, supra*, 25 Cal.3d at p. 441; *Serrano, supra*, 211 Cal.App.4th at p. 503.) Alvarez did not file a supplemental brief. Accordingly, we dismiss Alvarez's appeal as abandoned. (*Serrano*, at pp. 503-504.)

#### **DISPOSITION**

The appeal is dismissed.

NOT TO BE PUBLISHED

CHANNEY, J.

We concur:

ROTHSCHILD, P. J.

SINANIAN, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.